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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATDOCTC@fr.com

Office Action Summary

Application No.

10/727,104

Applicant(s)

ESCHENROEDER ET AL.

Examiner

DIEM K. CAO

Art Unit

2194

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2, 10-20, 22 and 27-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 10-20, 22 and 27-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. Claims 1-2, 10-20, 22 and 27-34 are pending. Applicant had amended claims 1, 10, 14, 15, 18, 19, 22, canceled claim 3, and added claim 34.

Continued Examination Under 37 CFR 1.114

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/3/2009 has been entered.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 18-20, 22 and 31-33 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 18, 19 and 22 are directed to computer programs, i.e., software per se, which are not physical “things”. They are neither computer components nor statutory processes, as they are not “acts” being performed. Such claimed computer programs do not define any structural and functional interrelationships between the computer program and other claimed elements of a computer which permit the computer program’s functionality to be realized. In contrast, a claimed storage computer-readable medium encoded with a computer program is a computer

element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory. See specification, page 16, paragraph [0068], discloses "The invention can be implemented ... software ... of them.

Claims 20 and 31-33 fail to remedy the deficiencies of claims 18, 19 and 22 above, and therefore are rejected under the same ground of rejection.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 12 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 12 recites "the component" at line 4, it is unclear as to which component of the plurality of components in claim 1 that "this component" is referred to. Examiner interprets "the component" as "the components" for examination purpose.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-2, 10-20, 22 and 27-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bendiksen et al (U.S. 2006/0085798 A1) in view of Alonso et al. (WISE: Business to Business E-Commerce) further in view of Morshed et al. (US 6,721,941).

As to claim 1, Bendiksen teaches a computer program product, tangibly embodied in a machine-readable storage device, the computer program product comprising instructions operable to cause data processing apparatus to perform operations comprising (page 1, paragraph 2):

receiving a plurality of process data items associated with a plurality of process instances that are executed using a plurality of components operating in a distributed computer system (the analyzer 10 collects events originated from one or more particular sensors 14; page 5, paragraph 78 and page 3, paragraph 47, and page 9, paragraph 119), each process data item comprising application data and having been collected by agents (the sensor generates the event, function call parameters to be sent; page 3, paragraphs 53-55 and page 5, paragraphs 82-85, and page 4, paragraph 62, and page 9, paragraph 119), wherein the plurality of components includes a first set of components that execute a first process instance (mortgage applications from online users, credit check application 1350, a tax assessment application 1360, a verify income application 1370, a title search application 1380 and an appraisal application 1390, evaluation application 1395, provides a response back to the client machine such as 'approved'; page 8, paragraphs [0114]-[0116]) and a second set of components that execute a second process instance (mortgage applications from online users, credit check application 1350, a tax assessment application 1360, a verify income application 1370, a title search application 1380 and an

appraisal application 1390, evaluation application 1395, provides a response back to the client machine such as 'disapproved'; page 8, paragraphs [0114]-[0116]. Applicant is noted that even though the terms "first process" and "second process" are not used, the current system monitors multiple global transactions, wherein the above is just an example of a global transaction, therefore, the system teaches "a first process" and "a second process"), a first set of agent associated with the first process, and a second set of agent associated with the second process (a plurality of sensors 14 are operated with the various applications to selectively capture event data based on the configuration data and commands sent from the analyzer 10; page 9, paragraph [0119], and the sensors 14 maybe considered as agents that reside in the space of a monitored process; page 3, paragraph[0047], since the global transaction involve multiple applications, there are first set of agents and second set of agents associated with components of first and second processes);

comparing in accordance with a plurality of predefined rules each received process data item with one or more other received process data items to identify process data corresponding to process instances executed on the distributed computer system (at step 610, the analyzer 10 ... for a next potential matching event; page 6, paragraph 86-92 and page 5, paragraph 81);

grouping into a first group a plurality of process data items corresponding to a first process instance (Assuming that the UserIdentifier ... the next potential matching event; page 6, paragraph 92 and the processes that he analyzer 10 users to group event ... and/or host; page 7, paragraph 107), the first process instance being a single execution of a sequence of related steps carried out in the distributed computer system (Assuming that the UserIdentifier ... the next

potential matching event; page 6, paragraph 92 and the processes that he analyzer 10 users to group event ... and/or host; page 7, paragraph 107);

grouping into a second group a plurality of process data times corresponding to a second process instance, the second process instance being a single execution of a second sequence of related steps carried out in the distributed computer system (Assuming that the UserIdentifier ... the next potential matching event; page 6, paragraph 92 and the processes that he analyzer 10 users to group event ... and/or host; page 7, paragraph 107 and Assuming that the UserIdentifier ... the next potential matching event; page 6, paragraph 92 and the processes that he analyzer 10 users to group event ... and/or host; page 7, paragraph 107 and see Fig. 13. Applicant is noted that although the reference does not use “first group” or “second group” or “first process instance” or “second process instance”, the reference teaches multiple groups and multiple process instances, thus meet the claim limitation); and

reconstructing the first and second process instances based on the process data items in the first and second group, respectively (At this time the list of events that make up the UOW can be displayed to the user for analysis; page 8, paragraph 111 and Another view is referred to as dynamic transaction visualization, where transactions are shown; page 9, paragraphs 122-123).

Bendiksen does not at least one of the plurality of components included in each of the first and second sets of components, wherein the agents include a first set of agents associated with less than all of the components of the first set of components and a second set of agents associated with less than all of the components of the second set of components.

However, Alonso teaches at least one of the plurality of components included in each of the first and second sets of components (Receive Claim, Check Customer, Cost Estimation, Payment; Fig. 1 and section 2.1 Virtual Enterprises). It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of Alonso to the system of Bendiksen because Alonso teaches a process monitoring that provides accurate measurements of all the characteristics affecting the execution of a process (page 6, section 5 Process Monitoring).

Morshed teaches a method for monitoring execution of an application (col. 2, line 66 – col. 3, line 1), by implementing hooks or points to allow for execution information to be gathered at particular points of interest about each of the processes (col. 34, lines 54-59). It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to apply the teaching of Morshed to the system of Bendiksen because Morshed also teaches a method to monitor the execution of a process without monitor each component included in the process, only monitor the process at particular points, thus, less information will be generated, and the system performance would be increased.

As to claim 2, Bendiksen teaches modeling a process based on the reconstruction of the first process instance (The graphical presentation ... of transaction problems; page 9, paragraphs 122-123).

As to claim 10, Bendiksen teaches a computer product, tangibly embodied in a machine-readable storage device, the computer program product comprising instructions operable to cause data processing apparatus to perform operations comprising (page 1, paragraph 2):

receiving a specification of a predetermined condition (each configuration message ... rules ... event data package; page 3, paragraphs 53 and 55),

upon the occurrence of the predetermined condition (the sensor 14 determines ... if there is a matching event; page 3, paragraph 54), using agents to collect a plurality of process data items associated with a plurality of components operating in a distributed computer system (the sensor 14 generates the event, thereby capturing the state of the triggering function call; page 3, paragraphs 54 and 47), wherein the plurality of components includes a first set of components that execute a first process instance (mortgage applications from online users, credit check application 1350, a tax assessment application 1360, a verify income application 1370, a title search application 1380 and an appraisal application 1390, evaluation application 1395, provides a response back to the client machine such as 'approved'; page 8, paragraphs [0114]-[0116]) and a second set of components that execute a second process instance (mortgage applications from online users, credit check application 1350, a tax assessment application 1360, a verify income application 1370, a title search application 1380 and an appraisal application 1390, evaluation application 1395, provides a response back to the client machine such as 'disapproved'; page 8, paragraphs [0114]-[0116]. Applicant is noted that even though the terms "first process" and "second process" are not used, the current system monitors multiple global transactions, wherein the above is just an example of a global transaction, therefore, the system teaches "a first process" and "a second process"), a first set of agent associated with the first process, and a

second set of agent associated with the second process (a plurality of sensors 14 are operated with the various applications to selectively capture event data based on the configuration data and commands sent from the analyzer 10; page 9, paragraph [0119], and the sensors 14 maybe considered as agents that reside in the space of a monitored process; page 3, paragraph[0047], since the global transaction involve multiple applications, there are first set of agents and second set of agents associated with components of first and second processes); and

transferring the process data items to a central system (The sensor 14 ... with the analyzer 12; page 3, paragraph 51) operable to discover (at step 910, the user specifies an event(e) of interest ...for analysis; pages 7-8, paragraph 111) and reconstruct the first and second process instances based on common application data found in the process data items (At this time the list of events that make up the UOW can be displayed to the user for analysis; page 8, paragraph 111 and Another view is referred to as dynamic transaction visualization, where transactions are shown; page 9, paragraphs 122-123), the process instances each being a single execution of a sequence of related steps carried out in the distributed computer system (units of work, transaction; page 7, paragraphs 107-110 and process the mortgage requests, credit check application, tax assessment application, etc; page 8, paragraph 114). Applicant is noted that although the reference does not use “first group” or “second group” or “first process instance” or “second process instance”, the reference teaches multiple groups and multiple process instances, thus meet the claim limitation.

Bendiksen does not at least one of the plurality of components included in each of the first and second sets of components, wherein the agents include a first set of agents associated

with less than all of the components of the first set of components and a second set of agents associated with less than all of the components of the second set of components.

However, Alonso teaches at least one of the plurality of components included in each of the first and second sets of components (Receive Claim, Check Customer, Cost Estimation, Payment; Fig. 1 and section 2.1 Virtual Enterprises). It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of Alonso to the system of Bendiksen because Alonso teaches a process monitoring that provides accurate measurements of all the characteristics affecting the execution of a process (page 6, section 5 Process Monitoring).

Morshed teaches a method for monitoring execution of an application (col. 2, line 66 – col. 3, line 1), by implementing hooks or points to allow for execution information to be gathered at particular points of interest about each of the processes (col. 34, lines 54-59). It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to apply the teaching of Morshed to the system of Bendiksen because Morshed also teaches a method to monitor the execution of a process without monitor each component included in the process, only monitor the process at particular points, thus, less information will be generated, and the system performance would be increased.

As to claim 11, Bendiksen teaches wherein the operating of collecting the process data items occurs without modifying the component (this process is conducted in a non-intrusive manner and does not require any additional recompilation or relinking of the user application; page 3, paragraph 48).

As to claim 12, Bendiksen teaches receiving a specification of a second predetermined condition (This management function ... messages, removing expired messages, and retrieving newly arrived messages, each configuration message contains a set of data collection filter rules; page 3, paragraph 53), and upon the occurrence of the second predetermined condition, collecting additional process data items associated with the components (the sensor 14 determines .. generates the event; page 3, paragraphs 54-55).

As to claim 13, Bendiksen teaches receiving a specification of a second component (inherent from multiple applications in a business process, each has its own local transaction/event collected by associated agent; page 8, paragraph 114 and page 9, paragraph 119 and This management function ... messages, removing expired messages, and retrieving newly arrived messages, each configuration message contains a set of data collection filter rules; page 3, paragraph 53), upon the occurrence of another predetermined condition, collecting other process data items associated with the second component, and transferring the other process data items to the central system (the sensor 14 determines .. generates the event; page 3, paragraphs 54-55).

As to claim 14, see rejection of claim 1 above. Bendiksen further teaches transferring the process data items from the agent to a central system (The sensor 14 ... with the analyzer 12; page 3, paragraph 51).

As to claim 15, it is the same as product claim of claim 1 except this is a method claim, and is rejected under the same ground of rejection.

As to claims 16-17, see rejections of claims 2-3 above.

As to claim 18, it is the same as product claim of claim 10 except this is a method claim, and is rejected under the same ground of rejection.

As to claim 19, it is the same as product claim of claim 1 except this is an apparatus claim, and is rejected under the same ground of rejection.

As to claim 20, see rejection of claim 2 above.

As to claim 22, it is the same as product claim of claim 10 except this is system claim, and is rejected under the same ground of rejection.

As to claims 27-33, Bendiksen teaches wherein the plurality of process data items includes a first type of process data item and a different, second type of process data item that are each collected by a common agent upon occurrence of a common predetermined condition (The rules determine the conditions which trigger event generation/reporting, as well as an amount of information to be collected from the event data packet, and "in some cases the amount of captured data may be made dynamic, e.g., as a function of the current environment or operating state of the system/processor being monitored; page 3, paragraphs [0053]-[0056]).

As to claim 34, Bendiksen teaches associating an agent of the first set of agents with a component of the first set of components (a plurality of sensors 14 are operated with the various applications to selectively capture event data based on the configuration data and commands sent from the analyzer 10; page 9, paragraph [0119], and the sensors 14 maybe considered as agents that reside in the space of a monitored process; page 3, paragraph[0047] and Fig. 1);

Bendiksen does not teach identifying a tracking point associated with a component of the first set of component. However, Morshed teaches identifying a tracking point of the monitored process (col. 34, lines 55-59).

See rejection of claim 1 above for reason to apply the teaching of Morshed to the system of Bendiksen.

Response to Arguments

9. Applicant's arguments filed 6/3/2009 have been fully considered but they are not persuasive.

In the remarks, Applicant argued in substance that (1) Bendiksen does not teach “a plurality of components that execute a plurality of process instances, and that include a first set of components that execute a first process instance and a second set of components that execute a second process instant with at least one of the plurality of components included in each of the first and second sets of components” in claims 1, 10, 14, 15, 18 and 19 because the applications are not the same as components (page 11, lines 9-25), (2) Alonso does not teach “a plurality of components that execute a plurality of process instances, and that include a first set of components that execute a first process instance and a second set of components that execute a second process instant with at least one of the plurality of components included in each of the first and second sets of components” in claims 1, 10, 14, 15, 18 and 19 because the processes of each of the insurance company and the loss adjuster company are not components (page 12, line 12 – page 13, line 10), (3) Each of claims 2, 11-13, 16, 17, 20, 22 and 27-33 depends from one of claims 1, 10, 14, 15, 18 and 19, which defined over the asserted references as discussed in points (1) and (2) above, consequently, each of the claims 2, 11-13, 16, 17, 20, 22 and 27-33 also defines over the asserted references for at least the same reasons, and (4) Bendiksen and Alonso do not teach the limitation of claim 34.

Examiner respectfully disagrees with the arguments:

As to the point (1), Bendiksen teaches a plurality of components that execute a process (Fig. 13 is a block diagram ... to the operation thereof; page 8, paragraph [0114]), thus, Bendiksen teaches the claimed limitation. As to Applicant arguments that applications are not the same as the components, examiner disagrees because when interpreting a claim, claims are given their broadest reasonable interpretation consistent with the specification (MPEP 2111), thus, an

application can be interpreted as an object, a component, is obvious to one of ordinary skill in the art. Therefore, the arguments are not persuasive.

As to the point (2), see examiner's position in point (1) above regarding what can be interpreted as "component".

As to the point (3), since the arguments are not persuasive for points (1) and (2) above, arguments regarding point (3) are also not persuasive.

As to the point (4), this is a new claim, and see rejection of claim 34 above.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DIEM K. CAO whose telephone number is (571)272-3760. The examiner can normally be reached on Monday - Friday, 7:30AM - 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hyung Sough can be reached on (571) 272-6799. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/DIEM K CAO/
Examiner
Art Unit 2194

DC
July 10, 2009